IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08/07/2003

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THE HONOURABLE MR.JUSTICE M. CHOCKALINGAM

CRL. APPEAL NO.828 OF 1996

State by
Public Prosecutor
High Court, Madras .. Appellant

-Vs-

Tmt. Ramadevi .. Respondent

This appeal is preferred under Section 378 of Cr.P.C. against the judgment dated 28.4.1995 in C.C.No.36 of 1992 on the file of the learned VII Additional Sessions Judge, Madras.

!For Appellant : Mr.V.Jaya Prakash Narayanan,
Govt. Advocate, (Crl. Side)

^For Respondent : Mr.A.Balaguru

:JUDGMENT

This is an appeal by the State challenging the judgment of acquittal by the the learned VII Additional Sessions Judge, Madras made in C. C.No.36 of 1992 wherein the respondent/accused stood charged and tried for the offences under Sections 12 & 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988.

2. The short facts which are necessary for the disposal of the appeal can be stated as follows:

P.W.1 Natarajan, Joint Transport Commissioner (i/c), Madras-5 accorded sanction under Section 19(1)(c) of Prevention of Corruption Act, 1 988 for the prosecution of the respondent Tmt. Ramadevi Jalasundaram for the alleged offences under Sections 7, 13(2) r/w 13(1)(d) and 12 of Prevention of Corruption Act, 1988 under Ex.P1. P.W.2 Kuppusamy asked the accused for a permit in respect of his auto rickshaw. At that time, the accused directed P.W.2 to get a certificate from a notary public regarding his name. When P.W.2 produced the said certificate on 4.9.1991, the accused demanded a sum of Rs.200/- as bribe. Thereafter P.W.2 not willing to give bribe decided to report the same to the concerned authorities. Accordingly, P.W.2 gave Ex.P4 report on 5.9.1991, on the basis of which, the concerned D.S.P. called the Inspector by name Jagannathan and two others by name Munitsha and Mohan, and introduced them to P.W.2. P.W.2 handed over the currency notes amounting to Rs.200/- to the said Inspector. The required test was conducted. The

Inspector handed over the said currency notes to P.W.2 and told him to give it to the accused on demand. When P.W.2 went to Regional Transport Office and met the accused, the accused again demanded bribe. P.W.2 gave the said currency notes to the accused and the accused received the same on 5.9.91 and put the bribe money in her black colour hand bag. Besides that, she asked P.W.2 to give bribe to one Karunanidhi. Immediately P.W.2 went outside and gave signal to the vigilance authorities. The Inspector asked P.W.2 to stand outside. When, the Inspector enquired the accused as to whether she received the bribe, she accepted the same. Then, he conducted a test and it was proved positive. Then the Inspector examined the bag of the accused, and the accused gave acceptable reasons for the remaining moneys available in the bag. Hence, he handed over the bag with remaining amounts to the accused. Then, the accused was told to take the said currency notes, and the Inspector compared the same with the particulars available with him and found correct. The Inspector recovered a small purse and obtained the affidavit of P.W.2 and records pertaining to P.W.2. A mahazar was prepared in that regard and P.W.3 Munsifshah signed in the same. Then the Inspector made a search in the house of the accused, and no material was found. P.W.5 Sundarrajan gave a report under Ex.P.11. P.W.6 Narasimhan, who was working as R.T.O, narrated the incident. P.W.7 Savarimuthu, was present at the time of the said test. P.W.9 Jagannathan, Inspector, received Ex.P4 report, investigated the same, examined the witnesses and recorded their statements. The case in Crime No.8/AC/93/AC was handed over to P.W.10, Subramaniam for further investigation. He enquired P.W.9 and the accused and recorded their statements. On completion of the investigation, P.W.10 filed a charge sheet on 1.4.1992 against the accused after getting sanction.

3. In order to prove its case, the prosecution has examined 10 witnesses and marked 14 exhibits and 6 material objects. After the evidence of the prosecution was over, the accused was questioned under S.31 3 of Cr.P.C. as to the incriminating circumstances found in the evidence of the prosecution witnesses, and the accused denied the same as false. On the side of the defence, D.W.1 was examined. After considering the rival submissions and scrutiny of the available materials, the trial Court acquitted the respondent/accused, which is under challenge.

4. The learned Government Advocate (Criminal Side) would submit that the lower Court was wrong in holding that P.W.1 was not a competent person to give sanction to prosecute the respondent; that it is pertinent to note that P.W.1, who accorded sanction to prosecute the accused, was a competent person by virtue of his position as Joint Commissioner; that according to P.W.1, he had additional charge as Joint Commissioner with all rights available to the Joint Commissioner, and hence, the judgment of the lower Court has got to be set aside and the respondent/accused be convicted of the charges framed against her.

5. Countering to the above contentions of the appellant's side, the learned Counsel appearing for the respondent/accused would urge that the lower Court only on proper appreciation of the entire evidence has come to the conclusion that P.W.1 was incompetent to accord sanction for prosecution; that in the instant case, the authority who appointed the respondent namely the Commissioner, has not given sanction to prosecute her; that the lower Court has rightly acquitted the accused, and hence, the judgment of the lower Court

has got to be sustained.
6. This Court has considered the rival submissions and has made a thorough scrutiny of the materials available.
7. The lower Court has acquitted the accused only on the ground that the authority who granted the sanction was not competent to do so, and hence, the prosecution cannot be said to be, in the eye of law, a valid one. The Court below has found that there was a demand and receipt of bribe as required under the provisions of the Prevention of Corruption Act. From the evidence adduced by the prosecution, it would be clear that P.W.1, who accorded sanction at the time when it was sought for, was not the Joint Commissioner. But, according to him, he was a Joint Commissioner in-charge. As rightly pointed out by the learned Counsel for the respondent/accused, though P.W.1 stated so in his evidence, no documentary evidence or material was placed in the hands of the lower Court to accept the same. It is not in dispute that the respondent was appointed by the Commissioner of the Transport Department. In the absence of any material to hold that the sanctioning authority at the relevant time, was the Joint Commissioner incharge or he was competent to dismiss the respondent, the contention of the State that he was competent to accord sanction cannot be accepted.
8. The learned Counsel for the respondent relied on a decision of the Apex Court reported in 2000 SUPREME COURT CASES (CRI) 687 (RAM KRISHAN PRAJAPATI VS. STATE OF U.P.), wherein it has been held thus:
"8. The position is now clear that even though the District Magistrate was also an appointing authority, as the appellant was in fact appointed by the Commissioner, who is admittedly a higher authority than the District Magistrate, the Commissioner is the appointing authority so far as the appellant is concerned.
9. If that be so, the appellant is entitled to contend that the sanction to prosecute him in this case should have been passed by the Commissioner and not by the District Magistrate. The sanction issued by the District Magistrate is not a sanction in the eye of law as the said authority was incompetent to accord sanction for prosecution under the Act concerning the appellant."
The said decision of the Apex Court is squarely applicable to the present facts of the case. Applying the said principles laid down by the Apex Court, the Court is of the considered view that in order to accept the contention of the State that sanction was accorded by a competent person namely P.W.1, who according to him was the Joint Commissioner, no documentary proof or material was placed in the hands of the Court below, and hence, the sanction accorded by P.W.1 is not a sanction in the eye of law, since he was incompetent to accord sanction for prosecution under the Act concerning the respondent/accused. Therefore, without any hesitation, on that ground, the Court has to necessarily agree with the findings recorded by the lower Court. The judgment of the lower Court acquitting the accused has got to be sustained.
9. In the result, this criminal appeal fails, and the same is dismissed, confirming the judgment of the lower Court.

Index: Yes
Internet: Yes

To:

1) The VII Additional Sessions Judge, Madras.
2) The VII Additional Sessions Judge, Madras,
Thro' The Principal Sessions Judge, Madras.
3) The Public Prosecutor, High Court, Madras.
4) Mr.V.Jaya Prakash Narayanan, Government Advocate
(Crl. Side), High Court, Madras.
5) The D.I.G. of Police, Chennai 4.

nsv/

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